

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

TIMOTHY W. CLAY,)	
)	
Petitioner,)	
)	
)	CIV-08-68-C
v.)	
)	
THE STATE OF OKLAHOMA, et al.,)	
)	
Respondent.)	

SECOND SUPPLEMENTAL REPORT AND RECOMMENDATION

Petitioner filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. # 1) on January 17, 2008, challenging his conviction for Assault and Battery with a Dangerous Weapon entered in the District Court of Oklahoma County, Oklahoma, Case No. CF-2004-6481. The matter was referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B), and the undersigned entered a Supplemental Report and Recommendation on May 14, 2008, in which the undersigned recommended that the Petition be dismissed without prejudice due to Petitioner's failure to exhaust available state court remedies. The Supplemental Report and Recommendation was adopted by Chief United States District Judge Cauthron in an Order entered June 5, 2008, and a Judgment of Dismissal Without Prejudice issued in this matter on June 5, 2008. Petitioner has now filed a pleading (Doc. # 22) entitled Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody challenging the same conviction he

challenged in his previous Petition.. The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

Petitioner asserts the same claims in his newly-filed Petition that he raised in the previous Petition. Although Petitioner was advised in the Supplemental Report and Recommendation entered May 14, 2008, of the opportunity to withdraw the unexhausted claims and proceed with only exhausted claims, Petitioner has not withdrawn the unexhausted claims. Nor has he demonstrated that he has exhausted available state court remedies with respect to the claims he has raised in this habeas proceeding. Accordingly, it is recommended that the newly-filed Petition be dismissed without prejudice.

RECOMMENDATION

Based on the foregoing findings, it is recommended that the Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 filed June 12, 2008 (Doc. # 22) be DISMISSED WITHOUT PREJUDICE. The Petitioner is advised of his right to file an objection to this Second Supplemental Report and Recommendation with the Clerk of this Court by August 13th, 2008, in accordance with 28 U.S.C. § 636 and LCvR 72.1. The Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991).

This Second Supplemental Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not

specifically addressed herein is denied.

ENTERED this 24th day of July, 2008.



GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE